IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 438 OF 2001

IN

WRIT PETITION NO. 133 OF 2001

AZAD KAMGAR UNION ... APPELLANT
(Org. petitioner)

Versus

M/s. METAGRAPHS PVT.LTD .. RESPONDENT
(Org. Respondent)

Mr. N.M.Ganguli for the appellant.
Ms. Anjali P. Purav with Sandeep Dabhale i/b.
V.P.Sawant for the Respondent.

CORAM: D.K.DESHMUKH &
J.H.BHATIA,JJ.
DATE : 4th September, 2007.

P.C.

1. By this Appeal, the appellant challenges the order passed by the learned Single Judge dated 9th March, 2001 in Writ Petition No. 133 of 2000. That

Writ Petition was filed by the appellant challenging the order passed by the Industrial Court in Complaint (ULP) No. 842 of 1998. By that order, the Industrial Court had dismissed the complaint filed by the present appellant. The appellant, which is a Trade Union, had filed the complaint under the Unfair Labour Practices Act alleging that the respondent has closed down its undertaking in breach of the provisions of Section 25FFA of the Industrial Disputes Act, 1947. It was an admitted position that on the date of the closure, the number of employees engaged by the respondent were less than 50. But according to the petitioner-appellant, as during the period of 12 months preceding the date of clsoure, on an average, more than 50 workmen were engaged by the respondent, in view of Section 25FFA, notice was required to be given before closing the undertaking. The Industrial Court did not accept this interpretation of the provisions of Section 25FFA. The learned Single Judge also upheld the decision of the Industrial Court. Section 25FFA which falls for consideration, reads as under :-

> "25FFA. Sixty days' notice to be given of intention to close down any undertaking: (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is

to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking :

Provided that nothing in this section shall apply to -

(a) an undertaking in which-
(i) less than fifty workmen are employed, or
(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

(2) Notwithstanding anything contained in sub-section (1), the appropriate Government, may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order."

2. The submission of the learned Counsel appearing for the appellant is that even in case of an undertaking where less than 50 employees are engaged on the date of closure, the requirement of clause (a)(ii) of sub-section (1) of Section 25FFA has to be satisfied. According to him, the word "or" appearing between sub-clauses (i) and (ii) of clause (a) of sub-section (1) of Section 25FFA has to be read as "and" and, therefore, when an undertaking is to be closed down even if there are less than 50 workmen working on that date of the intended closure, the employer has to satisfy, if he does not want to give notice provided by Section 25FFA that during the 12 preceding months, on an average, workmen engaged were less than 50. In other words, if it is proved that during the last preceding 12 months, workmen engaged were more than 50, then notwithstanding that on the date of the intended closure, workmen engaged are less than 50, Section 25FFA has to be complied with. We are unable to agree with the submission of the learned Counsel for the appellant. It is clear from Section 25FFA that if in an undertaking less than 50 workmen were employed on the date the employer intends to close down the undertaking, then it is not necessary to issue any notice. Even in case of an undertaking where on the date of intended clsoure, there were more than 50 workmen employed, still the

requirement of giving notice is dispensed with if it can be demonstrated that there were less than 50 workmen employed, on an average, per working day in the preceding 12 months. If the provisions are read as the learned Counsel appearing for the appellant wants us to read, then the provisions of clause (a)(i) would be rendered meaningless because in each case, even if on the date of intended closure, the workmen engaged are less than 50, the employer will have to satisfy that even during the 12 preceding months, the number of workmen employed on an average was less than 50. It is further to be seen that the purpose of the enacting proviso is to carve out an exception to the general rule incorporated in the main provision. It is obvious from the proviso in question that there are two exceptions carved out to the general rule contained in the main provision requiring employer to give notice before closure. In any case, we find that the interpretation placed on the provisions of Section 25FFA by the Industrial Court as also by the learned Single Judge is a possible interpretation of the provisions. Therefore, there is no scope to interfere with the impugned order.

3. In the result, therefore, the Appeal fails and is dismissed.

--

(D.K.DESHMUKH,J)

(J.H.BHATIA,J.)